

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 08-2685 DSF (AJWx)

Date 7/22/08

Title Richard J. Glair v. National Evaluation Services

Present: The
Honorable

DALE S. FISCHER, United States District Judge

Debra Plato

Not Present

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (In Chambers) Second Order to Show Cause Re Remand

Defendant National Evaluation Systems (“NES”)¹ removed this action to federal court on April 23, 2008, asserting that jurisdiction was proper under the diversity statute, 28 U.S.C. § 1332. NES attempted to demonstrate that it was a citizen of Minnesota and Massachusetts and that Plaintiff is a citizen of California.

NES is an unincorporated division of NCS Pearson, Inc. (Notice of Removal ¶ 3.) A division of a corporation is not a separate entity for jurisdictional purposes. Breitman v. May Co. Cal., 37 F.3d 562, 564 (9th Cir. 1994). Thus, NES’s purported citizenship is irrelevant for purposes of diversity jurisdiction. Accordingly, on June 11, 2008, the Court issued an Order To Show Cause, requesting that NES establish the citizenship of the proper entity, NCS Pearson, Inc. See Schwartz v. Elec. Data Sys., Inc., 913 F.2d 279, 284 (6th Cir.1990).

On July 14, 2008, NES filed its response. The response seeks to establish the citizenship of “the Evaluation Systems group of Pearson (“Pearson”), formerly National Evaluation Systems, a division of NCS Pearson, Inc.” (Decl. of Helene Wegrzynek in Resp. to Order To Show Cause Re: Remand to State Ct. ¶ 1.) It is unclear what “Pearson” Defendant’s declaration refers to – the former NES, NCS Pearson, Inc., or perhaps an entity that succeeded NCS Pearson, Inc. It appears likely, however, that NES is again providing information for the unincorporated division formerly known as NES. This is insufficient to establish diversity of the parties.

¹ NES notes in the Notice of Removal that it was erroneously named as National Evaluation Services.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Accordingly, the Court orders Defendant to show cause in writing no later than August 11, 2008 why this action should not be remanded for the reasons noted above. This deadline shall not extend the time for responding to any motion for remand filed by Plaintiff. Plaintiff may submit a response in the same time period. The parties are reminded that courtesy copies are to be delivered to Chambers. Failure of Defendant to respond by the above date will result in the Court remanding this action to state court.

IT IS SO ORDERED.